

CAUSE NO: _____

JENNIFER LEWIS, Individually and as	§	IN THE DISTRICT COURT OF
Personal Representative of the Estate of	§	
James Lewis, Deceased; JOSHUA LEWIS;	§	
and ASHLEE LEWIS	§	
Plaintiffs,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
JOHN HENRY FISCHER II, M.D. and	§	
SINGLETON ASSOCIATES, P.A.	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, JENNIFER LEWIS, Individually and as Personal Representative of the Estate of James Lewis, Deceased, JOSHUA LEWIS and ASHLEE LEWIS, ("Plaintiffs"), complaining of JOHN HENRY FISCHER II, M.D. and SINGLETON ASSOCIATES, P.A. ("Defendants"), and for cause of action would respectfully show the Court and the jury as follows:

I.
DISCOVERY CONTROL PLAN

1. Discovery in this case should be conducted under Level 3, pursuant to Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE. Plaintiffs respectfully request that this Court enter an appropriate scheduling order so that discovery may be conducted in this case pursuant to Level 3.

II.
PARTIES

2. Plaintiff, JENNIFER LEWIS, brings this suit in her individual capacity and as personal representative of the estate of her husband, James Lewis, Deceased. Plaintiffs, JOSHUA LEWIS and ASHLEE LEWIS bring this suit in their individual capacities. All Plaintiffs are residents of

the State of Texas.

3. Defendant, JOHN HENRY FISCHER II, M.D. is a physician practicing medicine in Harris County, Texas. This Defendant may be served with citation by serving John Henry Fischer II, M.D. at 7600 W. Tidwell, Suite 103, Houston, Texas 77040, or wherever he may be found.

4. Defendant, SINGLETON ASSOCIATES, P.A. is a professional association duly formed and operating under Texas Law with its principal place of business in Houston, Texas. This Defendant may be served with citation by serving Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company at 211 E. 7th St., Suite 620, Austin, TX 78701, or wherever it may be found.

5. To the extent that the above-named Defendants are conducting business pursuant to a trade name or assumed name, then suit is brought against them pursuant to the terms of Rule 28 of the Texas Rules of Civil Procedure, and Plaintiffs hereby demand that upon answering this suit, Defendants answer in their correct legal name and assumed name.

III. JURISDICTION AND VENUE

7. Plaintiffs cite to and fully incorporate herein the facts set forth in Sections II, IV, and V of this pleading.

8. Plaintiffs affirmatively plead that this Court has jurisdiction because the damages sought are in excess of the minimum jurisdictional limits of the Court. Furthermore, all of the causes of action asserted in this case arose in the State of Texas, and all of the parties to this action are either residents of the State of Texas or conduct business in this State and committed the torts that are the subject of this suit in whole or in part in Texas, as hereafter alleged in more detail. Furthermore, one or more of the Defendants is a resident of the State of Texas and there is not complete diversity of citizenship. Therefore, this Court has both subject matter and personal jurisdiction over all of

the parties and all of the claims.

9. Venue is proper in Harris County, Texas under the general venue statute of TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas and no mandatory venue provision applies.

IV. WRONGFUL DEATH AND SURVIVAL ACTIONS

10. These claims are brought pursuant to § 71.002 and § 71.021 of the Texas Civil Practice & Remedies Code, more commonly referred to as Wrongful Death and Survival Actions. No administration of Mr. Lewis' estate was instituted, there being no estate debts or need for an administration, and no administration is pending or necessary. Plaintiffs are the sole statutory beneficiaries under the Texas Wrongful Death Statute, and are entitled to maintain individual claims thereunder. Plaintiffs are the sole heirs at law of Mr. Lewis.

V. CAUSES OF ACTION

11. It has become necessary to institute this suit due to the timely death of Mr. James Lewis as a result of medical malpractice. When this case is tried the evidence will show that Mr. Lewis was 52 years old when he was admitted to Baylor St. Luke's Medical Center in Houston Texas on January 1, 2018 for a heart transplant. The evidence will show that following the heart transplant, Mr. Lewis experienced a number of complications that resulted in the transplanted heart failing and a total artificial heart being used as a bridge to another heart transplant. However, the evidence will also show that despite these complications, Mr. Lewis remained awake and responsive and even interacted with his family and hospital staff.

12. The evidence will further show that on March 21, 2018, Dr. John Henry Fischer II, M.D. ("Dr. Fischer") was asked to exchange Mr. Lewis' dialysis catheter and central line. The evidence

will show that as he was doing so, Dr. Fischer allowed one of the lines to be sucked into the total artificial heart which resulted in the device malfunctioning. Mr. Lewis was taken emergently to the operating room but 45 minutes passed between the time of the device malfunction and the driver being changed. The evidence will show that because of the device malfunctioning, Mr. Lewis' blood pressure became critically low which starved his organs, including his brain, of the oxygen they need to survive. Unfortunately, by the time the driver was replaced, it was already too late. Mr. Lewis had experienced permanent brain damage. He was transferred to comfort care and at 3:01 p.m. on March 23rd, he died.

13. When this case is tried, the evidence will show that the standard of care mandates that physicians like Dr. Fischer are never allowed to let a line to be suctioned into a device like a total artificial heart. The evidence will also show that when a line exchange is performed properly, this complication does not occur. Therefore, when this case is tried, the evidence will show that Dr. Fischer breached the standard of care in his care and treatment of Mr. Lewis and that this negligence includes, but is not limited to, (1) the manner in which the procedure was performed; and (2) allowing the line to become sucked into the total artificial heart. In other words, the evidence will show that Dr. Fischer breached the standard of care in his care and treatment of Mr. Lewis, said breaches of the standard of care constitute negligence as that term is defined by the laws and statutes of Texas, and said breaches of the standard of care proximately caused the Plaintiffs' resulting injuries and damages.

14. At all times material to this cause, Dr. Fischer was acting within the course and scope of his employment and/or agency as the employees, servants, agents, and/or alter egos of SINGLETON ASSOCIATES, P.A. Therefore, this defendant is liable under the doctrines known as *respondeat superior*, *alter ego*, apparent, and/or ostensible agency, and/or agency by estoppel

as those terms are defined and applied under the laws and statutes of the State of Texas.

VI. DAMAGES

15. The above breaches of the standard of care by Defendants were a proximate cause of harm to Plaintiffs. As a result of Defendants' conduct set forth above, Plaintiffs suffered damages, including, but not limited to, the following:

1. "Loss of companionship and society" sustained in the past, that is, the loss of positive benefits flowing from the love, comfort, companionship, and society that Plaintiffs, in reasonable probability, would have received from Mr. Lewis had he lived;
2. Loss of companionship and society that, in reasonable probability, will be sustained in the future;
3. Mental anguish sustained in the past, that is, the emotional pain, torment, and suffering experienced by Plaintiffs because of the death of Mr. Lewis; and
4. Mental anguish that, in reasonable probability, will be sustained in the future.
5. Pecuniary loss sustained in the past.
6. Pecuniary loss that, in reasonable probability, will be sustained in the future.

16. This suit is also instituted by Jennifer Lewis in her representative capacity as personal representative of the estate of James Lewis, Deceased, for the recovery of the following, which are provided under the Survival Statute:

1. Pain and Mental Anguish; that is, the conscious physical pain and emotional pain, torment, and suffering experienced by Mr. Lewis before his death as a result of the occurrence in question;
2. Medical Expenses; that is, the reasonable expense of the necessary medical and hospital care received by Mr. Lewis for treatment of injuries sustained by him as a result of the occurrence in question;
3. Funeral and burial expenses; that is, the reasonable amount of expenses for funeral and burial for Mr. Lewis reasonably suitable to his station in life.

17. The damages pled exceed the minimal jurisdictional limits of this Court.

VII.
DISCOVERY REQUESTS

18. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs request Defendants to disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2(a) through (l) of the Texas Rules of Civil Procedure. Pursuant to Texas Rules of Civil Procedure 193, 196, 197, and 198, Plaintiff requests that Dr. Fischer respond to the requests within Exhibit A.

VIII.
NOTICE

19. Plaintiffs provided one or more Defendant with written notice of their claims as required by the Texas Civil Practice & Remedies Code §74.051, of the Medical Liability and Insurance Improvement Act.

IX.
EXPERT REPORT

20. Pursuant to Chapter 74 of the Texas Civil Practice and Remedies Code, Plaintiff hereby serves on the parties the expert report and curriculum vitae required. The expert report and curriculum vitae of Michael Koumjian, M.D., F.A.C.S., F.A.C.C. are attached hereto as Exhibits B and C respectively and are served in compliance with the Texas Rules of Civil Procedure.

X.
JURY TRIAL

21. Plaintiffs respectfully request a jury trial in accordance with the applicable provisions of the Texas Rules of Civil Procedure.

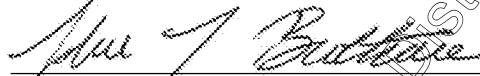
XI.
PRAYER

22. For the above reasons, Plaintiffs request that Defendants be cited to appear and answer, and that on final trial Plaintiffs have judgment against Defendants, jointly and severally, for:

- (a) All actual damages, general and special, to which they show themselves justly entitled;
- (b) Pre-judgment and post-judgment to the extent allowed by law;
- (c) All costs incurred in this lawsuit; and
- (d) Such other and further relief, at law and in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

BROWN & BROTHERS



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